

HOUSE BILL NO. 104

INTRODUCED BY R. LENHART

BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE PROVISION FOR ESTABLISHING A GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT AND ELIMINATING THE PROVISION'S CONTINGENT EFFECTIVE DATE; CLARIFYING PROVISIONS ON THE REDEPOSIT OF CONTRIBUTIONS FOR MEMBERSHIP SERVICE AND ON RETIREES RETURNING TO EMPLOYMENT BY STRIKING RELEVANT LANGUAGE IN CURRENT CODE SECTIONS AND RECODIFYING THE LANGUAGE AS NEW SECTIONS; PROVIDING FOR THE OPTION TO PURCHASE MONTANA UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM SERVICE; REVISING CERTAIN PROVISIONS GOVERNING THE RECALCULATION OF BENEFITS WHEN A RETIRED MEMBER RETURNS TO EMPLOYMENT; PROVIDING FOR THE REDUCTION OF RETIREMENT BENEFITS IN LIEU OF CANCELING THE BENEFITS IN CERTAIN CIRCUMSTANCES; CLARIFYING PROVISIONS ON EMPLOYEE TERMINATION PAY CONTRIBUTIONS; AMENDING SECTIONS 19-20-208, 19-20-212, 19-20-302, 19-20-401, 19-20-407, 19-20-415, 19-20-602, 19-20-716, 19-20-718, 19-20-802, 19-20-804, 19-20-806, AND 19-20-1001, MCA, AND SECTION 29, CHAPTER 111, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 19-20-208, MCA, is amended to read:

"19-20-208. Duties of employer. Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system,

1 inform the person of the rights and obligations relating to the retirement system;

2 (5) each month, report the name, social security number, and gross earnings of each retired member
3 of the system who has been employed in a part-time teaching, administrative, or faculty position under the
4 reemployment provisions of ~~19-20-804~~ [section 14];

5 (6) whenever applicable, inform an employee of the right to elect to participate in the optional retirement
6 program under Title 19, chapter 21;

7 (7) at the request of the retirement board, certify the names of all persons who are eligible for
8 membership or who are members of the retirement system;

9 (8) notify the retirement board of the employment of a person eligible for membership and forward the
10 person's membership application to the board;

11 (9) if the employer has converted to earned compensation amounts excluded from earned
12 compensation, for each retiring member, certify to the board the amounts reported to the system in each of the
13 5 years preceding the member's retirement."
14

15 **Section 2.** Section 19-20-212, MCA, is amended to read:

16 **"19-20-212. ~~(Effective on occurrence of contingency)~~ General internal revenue service**
17 **qualification rules.** (1) The board shall distribute the corpus and income of the system to the members and their
18 beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the
19 satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes
20 other than the exclusive benefit of the members and their beneficiaries.

21 (2) Forfeitures arising from severance of employment, from death, or for any other reason may not be
22 applied to increase the benefits that any member would otherwise receive under the state's law. However,
23 forfeitures may be used to reduce the costs of administration.

24 (3) Distributions from the system may be made only upon retirement, separation from service, disability,
25 or death.

26 (4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with
27 respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue
28 Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301,
29 et seq.

30 (5) (a) ~~The board may maintain a qualified governmental excess benefit arrangement under section~~

~~415(m) of the Internal Revenue Code. If at any time that the board finds that benefits payable or contributions~~
~~required under this chapter would exceed the limits established under section 415 of the Internal Revenue Code,~~
the board ~~elects to~~ may establish a qualified governmental excess benefit arrangement; ~~the board shall~~ and
adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in
accordance with the Internal Revenue Code and this section.

(b) An excess benefit arrangement established pursuant to this section is subject to the following requirements:

(i) The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement.

(ii) The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement.

(iii) The benefit arrangement must be a separate part of the system. ~~The benefit arrangement is subject to the following requirements:~~

~~(a)~~(iv) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

~~(b)~~(v) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30."

Section 3. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in

1 a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent,
2 a special education cooperative, a public institution of the state of Montana, the Montana state school for the
3 deaf and blind, or a school district;

4 (d) a person who is an administrative officer or a member of the instructional staff of the board of public
5 education;

6 (e) the superintendent of public instruction or a person employed in an instructional services capacity
7 by the office of public instruction; and

8 (f) a person elected to the office of county superintendent of schools.

9 (2) A retired member elected to the office of county superintendent of schools or appointed to complete
10 the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership
11 in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking
12 office, elect to become or to not become an active member of the teachers' retirement system. The retirement
13 system membership of an elected county superintendent of schools as of June 30, 1995, must remain
14 unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

15 (3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

16 (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal
17 year; and

18 (b) have the compensation for the person's creditable service totally paid by an employer.

19 (4) (a) A substitute teacher or a part-time teacher's aide:

20 (i) shall file an irrevocable written election determining whether to become an active member of the
21 retirement system on the first day of employment; or

22 (ii) is required to become an active member of the retirement system after completing 210 hours of
23 employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership
24 under subsection (4)(a)(i).

25 (b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active
26 member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the
27 substitute teacher is required to remain a member as long as the teacher is available for employment in that
28 capacity.

29 (c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a
30 member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day

1 of employment as a substitute in the next school year after July 1, 1999.

2 (d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the
3 retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of
4 employment as a part-time teacher's aide after July 1, 2001.

5 (e) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the
6 first day of employment of the option to elect membership under subsection (4)(a)(i).

7 (f) If a substitute teacher or part-time teacher's aide declines to elect membership during the election
8 period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving
9 membership and the employer shall retain the statement.

10 (5) A school district clerk or business official may not become a member of the teachers' retirement
11 system. A school district clerk or business official who is a member of the system on July 1, 2001, is required
12 to remain an active member of the system while employed in that capacity, and any postretirement earnings from
13 employment as a school district clerk or school business official are subject to the limit on earnings provided in
14 ~~19-20-804~~ [section 14].

15 (6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the
16 retirement board shall determine the person's eligibility for membership. All persons in similar circumstances
17 must be treated alike.

18 (7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours
19 a day assisting a certified teacher in a classroom."

20
21 **Section 4.** Section 19-20-401, MCA, is amended to read:

22 **"19-20-401. Creditable service.** (1) The creditable service of a member begins on the date of ~~his~~ the
23 member's employment in a capacity prescribed for ~~his~~ eligibility in 19-20-302 and accumulates to the member's
24 credit on the basis of the retirement board's policy governing creditable service.

25 (2) The creditable service of a member includes the following:

26 (a) each year of service for which contributions to the retirement system were deducted from ~~his~~ the
27 member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this
28 chapter, and their subsequent amendments, except that ~~no~~ credit may not be awarded for those years of service
29 for which the contributions have been withdrawn and not replaced;

30 (b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws

1 of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406;

2 (c) any out-of-state employment service awarded by the retirement board under the provisions of
3 19-20-402;

4 (d) any service awarded for employment while on leave under 19-20-403;

5 (e) any service in the military, red cross, or merchant marine awarded by the retirement board under
6 19-20-404;

7 (f) any employment service awarded by the retirement board under the provisions of 19-20-408;

8 (g) any service transferred after October 1, 1989, from the public employees' retirement system under
9 19-20-409;

10 (h) any service awarded by the retirement board for extension service employment under 19-20-410;
11 and

12 (i) any service awarded for absence ~~due to~~ because of employment-related injury under 19-20-411; and

13 (j) any service awarded for service purchased under [section 7].

14 (3) The retirement board's determination of creditable service under this section is final and conclusive
15 for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the
16 establishment of creditable service, in which case the board shall redetermine the creditable service.

17 (4) For a member completing only part-time service during the qualifying period, the first full year's
18 teaching salary used to calculate the cost to purchase creditable service is the salary that ~~he~~ the member would
19 have earned if ~~his~~ the member's first year part-time salary had been full-time."

20
21 **Section 5.** Section 19-20-407, MCA, is amended to read:

22 **"19-20-407. No duplication of credit for same period of service.** A member may not receive
23 duplicate credit for the same period of service. A retiree returning to active service may not be granted creditable
24 service for the same period of time that the retiree was receiving a retirement benefit."

25
26 **Section 6.** Section 19-20-415, MCA, is amended to read:

27 **"19-20-415. Procedure for purchase of service credit and pick up.** (1) A member who wishes to
28 redeposit, pursuant to ~~19-20-602(3)~~ [section 9], amounts previously withdrawn or who is eligible to purchase
29 service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or
30 purchase:

1 (a) The member may elect a lump-sum payment, a series of installment payments, or a combination
2 of lump-sum payments and installment payments.

3 (b) If a series of installment payments is elected by the member, the member may elect to pay the
4 installments directly to the board or to have the installments paid by payroll deduction or the member may select
5 a combination of both.

6 (c) With respect to installments payable by payroll deduction, if the member's employer has adopted
7 the resolution described in subsection (2), the member shall complete the irrevocable written application to
8 purchase service provided for in subsection (4). If the member's employer has not adopted the resolution, the
9 member may elect only a revocable written application to purchase service.

10 (2) An employer may adopt a resolution to pick up and pay the member's elective contributions made
11 pursuant to a binding, irrevocable written application. The contributions picked up by the employer must be
12 payable from the same source as is used to pay compensation to the member. The resolution must contain the
13 following statements:

14 (a) that the member contributions, even though designated as member contributions for state law
15 purposes, are being paid by the employer in lieu of the contributions by the member; and

16 (b) that the member may not choose to receive the contributed amounts directly instead of having them
17 paid by the employer to the system.

18 (3) (a) With respect to any member's elective contributions, the effective date of the employer pickup
19 is the later of:

20 (i) the adoption of the employer's resolution; or

21 (ii) the date that the irrevocable written application is signed by both the member and the member's
22 employer.

23 (b) The pickup does not apply to a contribution made before the effective date of the employer's
24 resolution. A written application to purchase additional service that is in effect on the effective date of the
25 employer's resolution is void, and the provisions of subsection (1) apply.

26 (4) The irrevocable written application to purchase service must be signed by the member and the
27 member's employer and filed with the board. Subject to any maximum amounts or duration established by state
28 or federal law, the irrevocable written application must specify:

29 (a) the amount of the deduction;

30 (b) the number of installments;

1 (c) the number of years and type of service that the member is purchasing; and

2 (d) that the contributions being picked up, although designated as member contributions, are being paid
3 by the employer directly to the board in lieu of contributions by the member.

4 (5) The minimum duration of the installments required by subsection (4)(b) is 3 months, and the
5 maximum duration is 5 years. The maximum number of years that may be purchased may not exceed the total
6 number of years that the member is eligible to purchase.

7 (6) The irrevocable written application does not give the member the option of receiving the deduction
8 amounts directly instead of having them paid by the employer to the system. A member may not prepay any
9 amounts under a binding, irrevocable written application.

10 (7) If a member terminates or dies prior to completion of the installment payments, the binding,
11 irrevocable written application expires and the board shall prorate the service credit purchased based upon the
12 amount paid as of the date of termination or death. In the case of a termination, the member may make a
13 lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal
14 Revenue Code. In the case of the member's death, the payment to purchase service may be made from the
15 member's estate subject to the limitations of section 415 of the Internal Revenue Code."
16

17 **NEW SECTION. Section 7. Creditable service for employment under optional retirement**
18 **program.** (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of
19 active membership subsequent to the member's participation in the optional retirement program pursuant to
20 19-21-201, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years
21 of creditable service in the retirement system for service covered under the optional retirement program.

22 (b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a
23 member of the scientific staff with an individual contract under the authority of the board of regents.

24 (c) Members may not receive credit for service as a student employed by the institution.

25 (2) For each year of service to be credited under this section, the member shall contribute the actuarial
26 cost of the service based on the most recent valuation of the system.

27 (3) The contributions and interest may be made in lump-sum payment or in installments as agreed
28 between the person and the retirement board.

29 (4) The provisions of 19-20-405 apply to creditable service purchased under this section.
30

1 **Section 8.** Section 19-20-602, MCA, is amended to read:

2 **"19-20-602. Annuity savings fund -- member's contribution.** (1) The annuity savings fund is a fund
3 in which the contributions for the members to provide for their retirement allowance or benefits must be
4 accumulated in individual accounts for each member. The normal contribution of each member is 7.15% of the
5 member's earned compensation.

6 (2) Contributions to and payments from the annuity savings fund must be made in the following manner:

7 (a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

8 (i) shall pick up and pay the contributions that would be payable by the member under this subsection
9 (2) for service rendered after June 30, 1985;

10 (ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

11 (iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

12 (b) The member's contributions picked up by the employer must be designated for all purposes of the
13 retirement system as the member's contributions, except for the determination of a tax upon a distribution from
14 the retirement system. These contributions must become part of the member's accumulated contributions but
15 must be accounted for separately from those previously accumulated.

16 (c) The member's contributions picked up by the employer must be payable from the same source as
17 is used to pay compensation to the member and must be included in the member's earned compensation as
18 defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the
19 amount of the member's contributions picked up by the employer and remit the total of the contributions to the
20 retirement board.

21 (d) The deductions must be made notwithstanding that the minimum compensation provided by law for
22 a member may be reduced by the deductions. Each member is considered to consent to the deductions
23 prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge
24 of all claims for the services rendered by the member during the period covered by the payment, except as to
25 the benefits provided by the retirement system.

26 ~~(3) In addition to the normal contributions, subject to the approval of the retirement board, and to the~~
27 ~~extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity~~
28 ~~savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated~~
29 ~~contributions that the member has previously withdrawn, plus interest in the amount the contributions would have~~
30 ~~earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415.~~

1 ~~(4)~~(3) The accumulated contributions of a member withdrawn by the member or paid to the member's
2 estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity
3 savings fund. Upon the retirement of a member, the member's accumulated contributions must be transferred
4 from the annuity savings fund to the pension accumulation fund."

5
6 **NEW SECTION.** **Section 9. Redeposit of contributions previously withdrawn.** In addition to the
7 normal contributions required under 19-20-602, subject to the approval of the retirement board, and to the extent
8 permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings
9 fund, by a single payment or by an increased rate of contribution, an amount equal to the accumulated
10 contributions that the member has previously withdrawn, plus interest in the amount that the contributions would
11 have earned had the contributions not been withdrawn. The redeposit must be made in accordance with
12 19-20-415.

13
14 **Section 10.** Section 19-20-716, MCA, is amended to read:

15 **"19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of
16 retirement, the member shall select, subject to ~~subsection~~ subsections (4) and (5), by signing a binding,
17 irrevocable written election at least 90 days before the member's termination date, one of the following options:

18 (a) Option 1--The member may use the total termination pay in the calculation of the member's average
19 final compensation. The member and the employer shall pay contributions to the retirement system as
20 determined by the board to adequately compensate the system for the additional retirement benefit. The
21 contributions must be made at the time of termination.

22 (b) Option 2--The member may use a yearly amount of the total termination pay added to each of the
23 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine
24 the amount of termination pay used in the calculation of average final compensation, termination pay must be
25 divided by the total number of years of creditable service to determine a yearly amount. The member and the
26 employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and
27 19-20-605(1). The contributions must be made at the time of termination.

28 (c) Option 3--The member may exclude the termination pay from the average final compensation. A
29 contribution is not required of either the member or the employer.

30 (2) A binding, irrevocable written election required by this section must be signed by both the member

1 and the employer at least 90 days prior to the member's termination date and must contain statements with
2 regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

3 (a) the contributions being picked up, although designated as member contributions, are being paid by
4 the employer directly to the system in lieu of contributions by the member and that the picked up contributions
5 are paid from the same source as compensation is paid;

6 (b) the member may not choose to directly receive the amounts deducted from the member's
7 termination pay instead of having them paid by the employer to the system;

8 (c) the member may not prepay any portion of the contributions; and

9 (d) the effective date of the pickup is the date that the irrevocable written election is signed by both the
10 member and employer. The effective date must be at least 90 days prior to the date of the member's termination.

11 The pickup does not apply to a contribution made before the effective date of the pickup.

12 (3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

13 (a) deducted from the portion of termination pay that:

14 (i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without
15 regard to the wage base limitation; and

16 (ii) can be included in the member's gross income for federal tax purposes; and

17 (b) picked up by the employer, except as provided in subsections (4) and (5).

18 (4) A member's contributions greater than the total amount of the member's termination pay may not
19 be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

20 ~~(4)(5)~~ If a member and the member's employer fail to sign the written election within the time period
21 required in subsection (1) ~~or if the member's contribution is greater than the total amount of termination pay~~, the
22 member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the
23 termination pay received. A contribution made pursuant to this subsection ~~cannot~~ may not be picked up by the
24 employer and is subject to the limitations of section 415 of the Internal Revenue Code."
25

26 **Section 11.** Section 19-20-718, MCA, is amended to read:

27 **"19-20-718. ~~(Effective on occurrence of contingency)~~ Maximum contribution limitation.** (1)

28 Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to
29 make a contribution to the system required under part 4 or 6 of this chapter that would exceed the limits in
30 section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively."

Section 12. Section 19-20-802, MCA, is amended to read:

"19-20-802. Early retirement. (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if the member files with the retirement board the member's written application.

(2) The early retirement allowance must be determined as prescribed in 19-20-804~~(4)~~ and section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a)

1 but not to exceed 60 additional months that the retirement date precedes the date on which the member would
2 have retired had the member attained 60 years of age or had the member completed 25 years of creditable
3 service."

4
5 **Section 13.** Section 19-20-804, MCA, is amended to read:

6 **"19-20-804. (Temporary) Allowance for service retirement.** ~~(4)~~ Except as provided in 19-20-806,
7 upon termination, a member who has attained normal retirement age must receive a retirement allowance equal
8 to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of
9 the number of years of creditable service and service transferred under 19-20-409.

10 ~~(2) Except as provided in subsection (4), a retired member may be employed part-time in a position~~
11 ~~specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater~~
12 ~~of:~~

13 ~~—— (a) one-third of the sum of the member's average final compensation; or~~

14 ~~—— (b) one-third of the median of the average final compensation for members retired during the preceding~~
15 ~~fiscal year as determined by the retirement board.~~

16 ~~—— (3) Each year on July 1 following the member's retirement effective date, the maximum earning amount~~
17 ~~allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban~~
18 ~~wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor~~
19 ~~agency in the preceding year.~~

20 ~~—— (4) (a) Except as provided in 19-20-806 and subsection (5) of this section, the retirement benefit of a~~
21 ~~retired member employed in a full-time position or earning more than allowed by subsection (2) must be~~
22 ~~canceled beginning in the month in which the retired member returns to full-time employment or earns more than~~
23 ~~allowed.~~

24 ~~—— (b) The retirement benefits of a retired member who was employed in a full-time position or who~~
25 ~~exceeded the amount that the retired member was eligible to earn under subsection (2) and who was~~
26 ~~reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of~~
27 ~~either the month following termination or July 1 of the school year following the date on which the retired member~~
28 ~~was reemployed. The reinstated retirement benefit is the amount that the retired member would have been~~
29 ~~entitled to receive had the retired member not returned to employment.~~

30 ~~—— (c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a~~

~~retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.~~

~~——— (d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).~~

~~——— (5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated. (Terminates July 1, 2006--sec. 6, Ch. 120, L. 2003.)~~

19-20-804. (Effective July 1, 2006) Allowance for service retirement. (4) Upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.

~~(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:~~

~~——— (a) one-third of the sum of the member's average final compensation; or~~

~~——— (b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.~~

~~——— (3) On July 1 of each year following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.~~

~~——— (4) (a) Except as provided in subsection (5), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.~~

~~——— (b) The retirement benefits of a retired member who was employed in a full-time position or who~~

~~exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~———(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.~~

~~———(d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).~~

~~———(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."~~

NEW SECTION. Section 14. Postretirement employment limitations -- cancellation and recalculation of benefits. (1) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of

1 labor or its successor agency in the preceding calendar year.

2 (3) Except as provided in subsection (5), the retirement benefit of a retired member:

3 (a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be
4 temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced
5 beginning as soon as practical after the excess earnings have been reported to the retirement system by the
6 employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed
7 exceed the gross monthly benefit amount.

8 (b) employed in a full-time position must be canceled beginning in the month in which the retired
9 member returns to full-time employment.

10 (4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection
11 (3), the retirement benefit of a member:

12 (a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning
13 either the first of the month following termination or on July 1 following the date on which the retired member was
14 reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired
15 member would have been entitled to receive had the retired member not returned to employment.

16 (b) who was reemployed and earned at least 1 year of creditable service must be recalculated under
17 19-20-804, if the member has attained normal retirement age, or under 19-20-802, if the member has not
18 attained normal retirement age but is eligible for early retirement. The recalculated benefit is based on the
19 service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated
20 subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount
21 of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the
22 member's benefits were canceled.

23 (5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days
24 from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with
25 the same employer, the member must be considered to have continued in the status of an active member and
26 not to have separated from service. Any retirement allowance payments received by the member must be repaid
27 to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be
28 canceled.

29
30 **Section 15.** Section 19-20-806, MCA, is amended to read:

1 **"19-20-806. (Temporary) Reemployment of certain retired teachers, specialists, or administrators**

2 **-- limitations -- employer defined.** (1) Subject to the provisions of this section:

3 (a) a teacher, specialist, or administrator who has been receiving a retirement allowance, except a
4 disability retirement allowance pursuant to part 9 of this chapter, for at least 12 months may be employed on a
5 part-time or full-time basis by an employer without the loss or interruption of any payments of retirement benefits
6 if:

7 (i) the member holds a valid certificate under the provisions of 20-4-106; and

8 (ii) the employer provides evidence to the office of public instruction each year that the employer has
9 been unable to fill the position because the employer has received no applications for the open position or has
10 not received an acceptance to an offer to fill the position from a nonretired teacher, specialist, or administrator;

11 (b) an employer shall by the 15th day of each month report to the office of public instruction and to the
12 ~~teachers'~~ retirement system the name, social security number, and gross earnings of each teacher, specialist,
13 or administrator employed in the preceding month under the provisions of this section;

14 (c) a retired member reemployed under this section is ineligible for active membership under 19-20-302;
15 and

16 (d) the office of public instruction and the ~~teachers'~~ retirement system shall report to the appropriate
17 committee in the 2007 legislative session regarding the implementation and results of this section.

18 (2) A retiree reemployed pursuant to this section must be considered an active member for the purposes
19 of calculating retirement system contributions required under 19-20-604 and 19-20-605.

20 (3) A retiree reemployed pursuant to this section is exempt from the earnings and employment limits
21 provided in ~~19-20-804(2) through (5)~~ [section 14].

22 (4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39,
23 chapter 31, the retiree is subject to all terms and conditions of the agreement and is entitled to all benefits and
24 protections provided by the agreement.

25 (5) The board may adopt rules to implement this section.

26 (6) As used in this section, "employer" means a public school district, as defined in 20-6-101 and
27 20-6-701, youth correctional facilities, special education cooperatives, and the Montana school for the deaf and
28 blind. (Terminates July 1, 2006--sec. 6, Ch. 120, L. 2003.)"

29
30 **Section 16.** Section 19-20-1001, MCA, is amended to read:

1 **"19-20-1001. Allowances for death of member.** (1) If a member dies before retirement, the member's
2 accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated
3 by a written application in a manner prescribed by the board and filed with the retirement board prior to the
4 member's death.

5 (2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of
6 service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The
7 retirement allowance must be determined as prescribed in 19-20-804(4) and section 5, Chapter 549, Laws of
8 1981, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

9 (b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

10 (i) the first of the month following the date of death; or

11 (ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system
12 before the member's death.

13 (c) In the event that payments made to the beneficiary do not equal the amount of the member's
14 accumulated contributions before the member's death, the difference between the total retirement allowance
15 payments made and the amount of the accumulated contributions at the time of the member's death must be
16 paid to the beneficiary's estate.

17 (3) If the deceased member had 5 or more years of creditable service and was an active member in
18 the state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to
19 the member's designated beneficiary.

20 (4) If a deceased member had 5 or more years of creditable service and was an active member in the
21 state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor
22 child of the deceased member until the child reaches 18 years of age.

23 (5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this
24 section upon the member's death, then:

25 (a) each beneficiary is entitled to share in that benefit; and

26 (b) if a beneficiary predeceases the member, the benefit must be divided among the surviving
27 beneficiaries."

28
29 **Section 17.** Section 29, Chapter 111, Laws of 1999, is amended to read:

30 **"Section 29. Effective ~~date~~ dates -- contingent effective ~~dates~~ date.** (1) Except as provided in

subsections (2) and (3), [this act] is effective July 1, 1999.

(2) The provisions in [sections 4 and 19], providing for the creation and use of an excess benefit arrangement, are effective ~~on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan~~ July 1, 2005.

(3) The provisions in [sections 9, 13, and 18], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan."

NEW SECTION. Section 18. Codification instruction. (1) [Sections 7 and 9] are intended to be codified as an integral part of Title 19, chapter 20, part 4, and the provisions of Title 19, chapter 20, part 4, apply to [sections 7 and 9].

(2) [Section 14] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 14].

NEW SECTION. Section 19. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 20. Retroactive applicability. [Section 14(4)(b)] applies retroactively, within the meaning of 1-2-109, to benefits recalculated on and after July 1, 2002.

- END -